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(ACE Paper 26/97)
for advice

ENVIRONMENTAL IMPACT ASSESSMENT (EIA) ORDINANCE

REVISED DRAFT TECHNICAL MEMORANDUM ON ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

Purpose

The purpose of this paper is to seek the views of members of the Advisory Council on the Environment (ACE) on the revised draft Technical Memorandum to be issued under the Environmental Impact Assessment (EIA) Ordinance.

Background

2. At its meeting in November 1995, the Council supported the provisions of the EIA Bill. The Bill was gazetted on 31 January 1996.

3. After 8 months of consultation and discussion at the Legislative Council's Bills Committee since April 1996, the EIA Bill together with the amendments proposed by the Government was enacted by the Legislative Council on 29 January 1997, and gazetted on 5 February 1997.

4. During the discussion at the Legislative Council's Bills Committee, 10 Bills Committee meetings were held and 25 submissions were received from various sectors of the community, ranging from professional bodies, academics, consultants, public corporations, and individuals. A number of useful suggestions and recommendations were made by the Bills Committee's members, and by the organisations and individuals who have submitted their views. The following amendments have been made to the EIA Bill to take account of the suggestions made:

- (a) to allow for the public to provide inputs at the early stage of the EIA process (i.e at the stage of project profile) without lengthening the processing time;
- (b) to disallow project proponents to split up a project to circumvent the EIA requirements under the EIA Ordinance;
- (c) to include deemed approved provisions if the statutory time limits for the Director to respond are exceeded;
- (d) to include a provision that the effect of the Secretary's advice is to protect the environment; and
- (e) to improve the definition of minor projects in Country and Marine Parks, Conservation Areas and Sites of Special Scientific Interest.

5. The EIA Ordinance would improve and strengthen the EIA system in Hong Kong, while providing a clear, transparent and consistent framework for private developers, investors and government proponents to follow.

Draft Technical Memorandum

6. As set out in Section 16 of the EIA Ordinance, the Director of Environmental Protection shall be guided by the Technical Memorandum when deciding on all key matters under the Ordinance. The draft Technical Memorandum sets out the principles, guidelines, requirements and criteria for the following matters :

- (a) the technical content of a project profile;
- (b) the technical content of an environmental impact assessment study brief or environmental impact assessment report;
- (c) deciding whether a designated project is environmentally acceptable;
- (d) deciding whether an environmental impact assessment report meets the requirements of the environmental impact assessment study brief;
- (e) deciding whether the Director of Environmental Protection will permit an applicant to apply directly for an environmental permit;
- (f) resolving conflicts on the content of the environmental impact assessment study brief and the environmental impact assessment report;
- (g) taking advice from other authorities;
- (h) deciding what is a material change, addition or an alteration to an environmental impact or to a designated project;
- (i) the issue of environmental permits; and
- (j) the imposition of environmental monitoring and audit requirements for designated projects as conditions of environmental permits.

7. Sections 1 to 12 of the draft Technical Memorandum outline the key principles and guidelines, while the 22 annexes give the criteria for assessment, guidelines for assessment methodologies, the guidelines on the review of the adequacy of EIA reports, and the guidelines for environmental monitoring and audit requirements.

8. Under Section 9.1 of the draft Technical Memorandum, the Director of Environmental Protection shall take advice from relevant authorities on matters under their jurisdiction.

9. The draft Technical Memorandum has been developed on the basis of the criteria and guidelines used in over 300 environmental impact assessments conducted in Hong Kong, and the actual experiences gained in the implementation of those projects that have been subject to the EIA process.

Consultation on the draft Technical Memorandum

10. The consultation on the draft Technical Memorandum was initiated on 31 January 1997 and was undertaken from February to March 1997. The draft Technical Memorandum has been sent to 63 organisations and interested parties, including all relevant professional organisations, key industrial and trade organisations, environmental groups and academics. The consultation process also included presentations to three major seminars organised by relevant organisations in March 1997 and attended by more than a hundred participants, on the EIA Ordinance and the draft Technical Memorandum.

11. The draft Technical Memorandum was presented to the Country and Marine Parks Board on 25 February 1997. While supporting the draft Technical Memorandum, members of the Board suggested that the guidelines and criteria for ecological assessment to address terrestrial and marine ecology should be strengthened. Views expressed by the members of the Board have been taken into account in revising the draft Technical Memorandum.

12. The draft Technical Memorandum was presented to the Industry and Technology Development Council on 12 March 1997. Members of the Council were satisfied with the draft and had no particular comment on the content.

13. The Antiquity Advisory Board was consulted on the draft Technical Memorandum by circulation in March 1997. Members of the Board were of the view that the draft Technical Memorandum on the whole was acceptable, and had suggested amendments to improve the texts on assessment of impacts on Sites of Cultural Heritage.

14. About 20 written comments from outside organisations were received. A summary of the key comments and suggestions received and the responses are presented in Appendix A. The major comments and suggestions raised are the following:

- (a) more specific criteria and guidelines for assessments and more comprehensive guidelines on the evaluation of environmental impacts;
- (b) the inclusion of the description on the beneficial environmental impacts of projects;
- (c) more specific requirements on the assessment of cumulative impacts;
- (d) the inclusion of description on alternative options or actions considered;
- (e) the need to apply the non-statutory criteria with some degree of flexibility;
- (f) clarification on the definitions of material changes;
- (g) clarification on the degree of flexibility in setting conditions in Environmental Permits.
- (h) more specific guidelines to strengthen the sections on ecological assessment and the inclusion of guidelines on off-site compensation; and
- (i) more specific guidelines on water quality assessment and assessment and evaluation of waste management;

Amendments and Improvements to the Draft Technical Memorandum

15. Considerable amendments have been made in the draft Technical Memorandum to improve the content, taking account of the comments and suggestions made. A copy of the revised draft Technical Memorandum is attached for members to comment. Compared to the draft Technical Memorandum issued on 31 January 1997, the following major improvements have been made:

- (a) more specific and comprehensive guidelines on the consideration of environmental benefits and various scenarios, the assessment and evaluation methodologies and criteria in general, and the assessment and evaluation criteria for impacts on ecology, water quality, air quality, noise, waste management, sites of cultural heritage;
- (b) a very comprehensive revision of the annexes relating to ecology, taking account of the comments and suggestions raised and including the latest guidelines and criteria for dealing with off-site ecological compensation;
- (c) amendments to improve and clarify the criteria in Annexes 3 to 10 to provide for more comprehensive and systematic evaluation of various environmental issues; and
- (d) amendments to clarify and make clear the guidelines laid down in Annexes 12 to 20, including more specific guidelines on the baseline study, prediction and evaluation methodologies, the considerations to measures to avoid and reduce adverse environmental impacts and the formulation of environmental monitoring and audit programme.

Schedule of Submission of the Technical Memorandum to Legislative Council

16. It is intended that the revised draft Technical Memorandum will be presented to the Legislative Council's Environmental Affairs Panel in early May to seek members' views. Taking into account any views expressed, the finalised Technical Memorandum is scheduled for gazettal in the end of May for negative approval by the Legislative Council, with a view to bringing the Environmental Impact Assessment Ordinance into operation in early 1998.

Advice Sought

17. Members are requested to comment on the revised draft Technical Memorandum and to support the submission of the revised draft Technical Memorandum to the Legislative Council.

Environmental Protection Department
April 1997

Appendix A

CONSULTATION ON THE DRAFT TECHNICAL MEMORANDUM ON THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS UNDER THE ENVIRONMENTAL IMPACT ASSESSMENT ORDINANCE

FROM FEBRUARY TO MARCH 1997

SUMMARY OF RESPONSES TO MAJOR COMMENTS RECEIVED

Introduction

The Environmental Impact Assessment (EIA) Ordinance was enacted on 29 January 1997. Consultation on the draft Technical Memorandum (TM) of the Ordinance was initiated on 31 January 1997 and was undertaken from February to March 1997. The draft Technical Memorandum was sent to 63 organisations and interested parties.

2. Besides, the Country and Marine Parks Board, Antiquity Advisory Board, and the Industry Technology and Development Council were consulted on the draft TM between February and March 1997. The draft TM was also presented to three major seminars on the EIA Ordinance and the TM.

3. Government departments and branches were also consulted on the amendments made.

4. To facilitate public access to the draft Technical Memorandum, the EIA Ordinance and the draft TM have been made available on the Environmental Protection Department's Homepage (www.info.gov.hk/epd/) on the Internet. The electronic form of the draft TM has attracted about 250 visits as at the end of March 1997.

Major Comments and Suggestions Received and the General Responses

5. About 20 organisations have submitted written comments on the draft TM. A summary of the major views from outside organisations and the responses to comments are set out below.

5.1 Request for More Specific Criteria and Guidelines

Many respondents called for more specific criteria and guidelines for the assessment of different environmental aspects set out in individual annexes including water pollution, waste management impacts, air quality impact, noise impact, ecological impacts, the impacts on fisheries, the impacts on cultural heritage and the impacts of contaminated land.

Response: more specific criteria and guidelines have been developed and included in various annexes of the revised draft TM, based on the experiences in recent EIA studies. These include the criteria and guidelines for the consideration of waste reduction measures, the criteria and guidelines for evaluating water pollution, criteria and guidelines for evaluating noise impact, criteria and guidelines for evaluating the air quality impact, the criteria on the evaluation of the significance of ecological impact, the ecological importance of a site/habitat or a species, the criteria and guidelines on the evaluation of fisheries impact, the guidelines for ecological assessment, the guidelines on the assessment of the impact on sites of cultural heritage, and the guidelines on the assessment of potential contaminated land issues.

5.2 **Review of Criteria in the TM**

Some respondents requested the Government to keep the criteria in the TM under constant review.

Response: the TM will be under constant review. It has been made known to the LegCo that the actual operation of the EIA Ordinance and the TM will be reviewed after 1 year of operation of the EIA Ordinance.

5.3 **Content of EIA Study Brief**

Some respondents would like to see more specific coverage of study brief to include the description on the geographic boundaries and temporal duration of an assessment. Some others were concerned about the means to resolve dispute on the content of a Study Brief.

Response: amendments have been made under respective annexes to clarify the coverage of the study brief. The EIA study brief may also prescribe the duration and extent of assessment. Regarding dispute resolution, under the main Ordinance, there is a provision for the applicant to appeal to an independent Appeal Board on the content of an EIA Study Brief.

5.4 **The Beneficial Environmental Impacts of Projects**

Some respondents considered that the objectives of EIA report should also include addressing beneficial environmental impacts apart from the adverse environmental impacts arising from a project.

Response: the text of the draft TM has been revised to take account of this point.

5.5 **Assessment of Cumulative Environmental Impact**

Some respondents commented that cumulative environmental impact cannot be well addressed by individual projects, without a good sharing of information, whereas others asked that cumulative environmental impact must be considered.

Response: Assessment of the cumulative environmental impact is required under the TM, in line with the existing EIA practice in the past few years. The EIA study will define the scope of cumulative impact assessment, having regard to the type, nature and location of the project and the issues in question. Under the main EIA Ordinance, the Director of Environmental Protection is required to maintain a public register to make approved EIA reports available to the public. The public register will provide a means for sharing information.

5.6 **Alternative Options of Projects**

Many respondents requested for the consideration of alternative options of projects.

Response: it is now a common practice that the ACE and the LegCo would ask for information

on alternatives considered. Amendments have been made in the TM to require an applicant to include information in an EIA report on alternatives considered, including alternative alignment and/or siting.

5.7 Standard Scientific Terms

Many respondents agreed that scientific terms should be standardised but a set of definitions need to be set out. However, there is no consensus view on how such definitions should be worked out.

Response: a set of definitions for most important terminologies has been set out in Schedule 1 of the main Ordinance. The approved EIA reports would provide a means whereby the meaning of terms used in EIA but not defined in the main Ordinance can be established. Consideration will be given to issue administrative guidance notes to provide a glossary of terms not defined in the Ordinance.

5.8 The Guidelines and Criteria for Ecological Assessment

Some respondents asked for more definitive guidelines on the requirements of ecological assessment study and off-site compensation to be defined in the TM.

Response: the guidelines on the requirements of ecological assessment have been comprehensively revised. Guidelines on off-site compensation have been included and are in line with the recently promulgated policy on off-site ecological compensation.

5.9 Definition on Material Change

Some respondents sought clarification on the definition on material change. The views are diverse: some respondents wanted to restrict the application of the term to significant changes, while others would like to see a wider application to those changes that may result in environmental impacts.

Response: the material change referred by this TM has been defined in the Schedule 1 of the EIAO and in the Section 6 of the draft TM. As a matter of principle, material change applies to those significant change that may result in adverse environmental impacts. This point has been clarified in the revised draft TM. The circumstances upon which significant change may occur are described in items (a) to (e) of section 6.1 of the draft TM. All these are based on the actual experiences in Hong Kong and the concerns expressed by members of the public, the LegCo and ACE in the past.

5.10 Degree of Flexibility in Environmental Permit

Some respondents would like to see more flexibility in setting Environmental Permit conditions while some others would like to see more restrictive Environmental Permit conditions such as the time of implementation of mitigation measures.

Response: the principles and criteria in setting Environmental Permit conditions are set out in Section 7 of the draft TM. The Environmental Permit conditions will be formulated on the basis

of the findings and recommended measures arising from the approved EIA reports, and the feasibility and practicality of such measures will have to be determined during the course of EIA studies.

5.11 Conflict Resolution by the Secretary for Planning Environment and Lands (SPEL)

Some respondents commented that although in giving advice to the Director, the Secretary shall have regard to the purposes of the Ordinance and this TM, there is no guarantee that “any other relevant factors” considered by Secretary are necessarily in line with the purposes of this Ordinance.

Response: it is set out in section 16(3) of the Ordinance that in giving advice pursuant to a technical memorandum, the Secretary shall ensure that the effect of his advice is to protect the environment. The TM has been revised accordingly to reflect this provision in the main Ordinance.

5.12 Environmental Monitoring and Audit

Some respondents were concerned about the uncertainty brought into a contract if the criteria in an Environmental Monitoring and Audit Manual have to be reviewed and revised during the Environmental Manual programme.

Response: to address this concern, the TM has been revised to require the Environmental Monitoring and Audit Manual only to be updated as necessary. Experience shows this kind of update would unlikely bring about substantial changes to the criteria in the Manual.

Conclusions

6. The consultation on the draft TM has resulted in useful comments and suggestions. Wherever possible, amendments have been made to the draft TM to accommodate the suggestions and comments. Major improvements have now been included in the revised TM to address various competing concerns and comments.

Environmental Protection Department
April 1997

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